



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

November 21, 1997

Memorandum

Audit Referral 97-02

To: Lawrence Noble
General Counsel

Through: John Surina
Staff Director

From: Robert J. Costa
Assistant Staff Director
Audit Division

Subject: Referral Matter-Buchanan Compliance Fund '92

It has come to the attention of the Audit staff that a committee/account named *Buchanan Compliance Fund '92* (the Fund), appears to have been set up for the purpose of paying expenses relating to the Federal Election Commission's audit of Buchanan for President, Inc. (1992). See Attachment 1. Since the candidate did not obtain his party's nomination and was not a candidate in the 1992 (or 1996) general election, this committee/account is viewed as a civil and/or criminal penalty account under 11 CFR §9034.4(b)(4). However, a review of the reports filed indicate that the Fund may have engaged in activity not allowed by 11 CFR §9034.4(b)(4).

The Audit Staff became aware of the existence of the Fund during the audit of 1996 Buchanan for President, Inc. (BFP '96). While reviewing contribution refunds, the Audit staff noted that nearly all refund checks had the following phrase either stamped or typed on the back: "Payable to Buchanan Compliance Fund." A total of \$67,320 in refund checks (through 9/30/96) were apparently endorsed by the named payees and then were deposited into the Fund account.

When questioned about the Fund, a BFP '96 official provided the Audit Staff with documents which he stated accompanied the refund checks when mailed to the contributors. See Attachments 1, 2, and 3. One document entitled *Buchanan Compliance Fund Fact Sheet* explains that the Fund was established to pay expenses relating to the FEC audit of the 1992 Buchanan for President Committee, including fines and penalties levied by the FEC; legal and consulting expenses pertaining to the audit; legal expenses related to an ongoing court case in Rhode Island; and general office expenses. Along with

this fact sheet, a letter was included which informed the contributor that his or her contribution was in excess of the \$1,000 contribution limitation (or \$100 limitation if the contribution was made in cash), and encouraged the contributor to endorse the refund check to the Fund and return it to BFP '96 using the postage paid envelope as part of the correspondence. The letters are signed "Scott B. Mackenzie, Treasurer."

The Audit Staff reviewed the disclosure reports filed by the Fund. A *Statement of Organization* was not filed, however, an initial disclosure report was filed on July 20, 1993, covering the period April 1, 1993 through June 30, 1993. The committee name on the report is Buchanan Compliance Fund. The Treasurer is identified as Angela M. "Bay" Buchanan, but the report is signed "SBM for Bay Buchanan." (SBM are the initials of Scott B. Mackenzie, Treasurer of BFP '96.) Quarterly reports have been filed through September 30, 1997 and each is signed this way. Beginning with the report for the period October 1, 1995 through December 31, 1995, the committee name on the reports changed to *Buchanan Compliance Fund '92*.

During the period April 1, 1993 through June 30, 1997, the Fund reported total receipts of \$170,199 and total disbursements of \$148,115. However, during the period from its inception through December 31, 1995, reported activity was very minimal -- \$7,568 in receipts and \$162 in disbursements, with ending cash at December 31, 1995 of \$7406. The bulk of the activity occurred between January 1, 1996 and September 30, 1996-- \$131,891 in receipts and \$134,521 in disbursements. Receipts through June 30, 1997 consisted of \$167,593 in contributions from individuals and a \$2,606 transfer from Buchanan for President '92. Reported disbursements consisted of payments for legal fees totaling \$78,675, administrative expenses totaling \$19,707 and two payments to Patton Boggs, PC totaling \$42,300 described as FEC Penalty (\$20,000) and FEC Repayment (\$22,300).¹

Since it appears from the public record that the Fund made impermissible payments² (e.g. legal fees, overhead expenses, and a repayment to the US Treasury), a review of the books and records of *Buchanan Compliance Fund '92* is warranted. Alternatively, if the Fund is viewed as a 1992 authorized committee, then an excessive contribution problem would exist when an individual's contribution(s) to the Fund is aggregated with the same individual's contribution(s) to other authorized committees.

¹ On June 10, 1996, the FEC received a check in the amount of \$22,199.93 from Patton Boggs, LLP representing a repayment for non-qualified campaign expenses (\$13,859), matching funds received in excess of entitlement (\$4,423), interest incurred from the final repayment date (\$3,506.93), and payment for stale dated checks (\$411). The check was delivered to the US Department of Treasury on June 19, 1996 for deposit as follows: Matching payment account, \$21,788.93; General Fund of the US Treasury, \$411.

² On October 29, 1996, the Commission determined that civil and/or criminal penalty accounts are *not* permitted to pay for overhead expenses related to such accounts or non-overhead expenses, such as, primary committee repayment obligations, legal fees, and fundraising costs.

Therefore, as recommended by the your memorandum of November 20, 1997, the Audit Division is referring this to your office as an enforcement matter.

If you have any questions concerning these matters please contact Gary Hache or Wanda Thomas at 219-3720.

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